
**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

**Grain Belt Express Clean Line LLC)
)
Application For an Order Granting Grain Belt)
Express Clean Line LLC a Certificate of Public)
Convenience and Necessity Pursuant to Section)
8-406.1 of the Public Utilities Act to Construct,)
Operate and Maintain A High Voltage Electric)
Service Transmission Line And to Conduct a)
Transmission Public Utility Business in)
Connection Therewith and Authorizing Grain)
Belt Express Clean Line Pursuant to)
Sections 8-503 and 8-406.1(i) of the Public)
Utilities Act to Construct the High Voltage)
Electric Transmission Line)**

Docket No. 15-0277

**REPLY BRIEF OF MARY ELLEN ZOTOS
[PUBLIC VERSION]**

Now comes MARY ELLEN ZOTOS (“MEZ”), by her attorney, PAUL G. NEILAN, and hereby files her Reply Brief in this proceeding pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (the “Commission”). Capitalized terms and abbreviations used herein without definition have the same meanings as in MEZ’s Initial Brief.

I. Introduction

B. Description of Grain Belt Express and the Project

2. Description of the Grain Belt Express Project

GBX misses the point of MEZ witness Severson’s testimony concerning the ultimate pass-through of transmission charges. (GBX Init. Brief, pg. 11, n. 7) As MEZ witness Severson testified, transmission charges in PJM are customarily billed separately and in addition to charges

for commodity electricity supply, although there are variations in how those costs are recovered. (MEZ Exh. 1.0, ll. 490-502). The payments for transmission service that west Kansas electricity shippers make to GBX will therefore be recovered, ultimately, from ratepayers – the end users of the electricity. A few pages later in its Initial Brief GBX effectively admits as much when it breaks out transmission charges of 2.0 cents/kWh to arrive at a total delivered cost for west Kansas windpower. (GBX Init. Brief, pg. 14). For this purpose, whether transmission cost recovery is effected through a separate line item charge or built into the price of the commodity is a distinction without a difference.

GBX also points out in its Initial Brief that the Missouri Public Service Commission (“MPSC”) denied its application for a CPCN for the portion of the Line to be located in Missouri. GBX is “currently analyzing how to address the concerns about the Project that the [M]PSC identified in its order, for the purpose of determining whether to file a new application....” (GBX Init. Brief, pg. 16). There is no schedule for any decision by GBX on whether and how it will proceed with regard to the MPSC and the Missouri portion of the Line, or whether it will commence a proceeding under Section 1222 of the Federal Energy Policy Act of 2005. (Id.).

Because there is no evidence in the record that GBX either could or would construct the Line so as to circumnavigate Missouri, if there is no Missouri portion of the Line, there is no Line. This renders moot the issues in this Docket.

IV. Section 8-406.1(f) Criteria for a Certificate

B. Section 8-406.1(f)

1. Necessary to Provide Adequate, Reliable, Efficient Service

GBX’s Initial Brief confirms MEZ’s point that to the extent there is any public need for

the Line, that need exists not in Illinois but in western Kansas. (GBX Init. Brief, pgs. 42-49). As MEZ pointed out in its Initial Brief, GBX once again portrays the Line and its ordinary use in transmitting electricity 780 miles as an end in itself, without reference to any public need in Illinois. GBX reverts to its reductive argument that over long distances AC transmission systems will experience higher losses than DC systems such as the Line. (GBX Init. Brief, pg. 43).

Whether DC transmission is better than AC over 780 miles is an easy question, and one to which the answer is well-known: yes. But this neatly packaged response that might be excerpted from an electrical engineering textbook leaves unanswered the question of *why* the Illinois public needs the Line, and hardly serves as grounds sufficient for this Commission to grant the power of eminent domain to a private company like GBX.

GBX also argues that the Project is needed because it will reduce loss of load expectation (LOLE) in Illinois pursuant to a study conducted by GBX witness Zavadil. (GBX Init. Brief, pgs. 47-49). But nothing in the record shows, nor does GBX argue, that the LOLE in Illinois is not acceptable today, without the Line, under any applicable reliability standard. Yet again, GBX uses alleged future benefits to supply the place of the present public need it must prove under Section 8-406.1.

IV. Section 8-406.1(f) Criteria for a Certificate

E. Proposed Conditions Relating to the Grant of the CPCN

1. Cost Allocation Condition

As stated in MEZ's Initial Brief, GBX's proposed cost allocation condition, namely, that GBX would first obtain the Commission's approval before seeking to recover costs of the Line from retail ratepayers, is worse than worthless. (GBX Init. Brief, pgs. 106-107). Were the Commission to accept GBX's proposed condition it would involve itself directly in issues

concerning the rates, terms and conditions of interstate transmission, and not only grossly transgress the limits of its own jurisdiction, but usurp FERC's as well.

V. Proposed Route of the Project in Illinois and Land Acquisition

E. Grain Belt Express' Approach to Land Acquisition

2. Grain Belt Express' Easement Compensation Package and Easement Agreement

In its Initial Brief, GBX states:

The rights of Grain Belt Express are limited to easement rights and do not create any opportunity for a valid mechanic lien on the landowner's property rights or ability to sell their property. [GBX Exh. 7.22, pg. 16]. In instances where landowners prefer greater clarification in this issue, Grain Belt Express has allowed landowners in other states to include express language in the easement agreement prohibiting any such liens on the landowner's property and requiring Grain Belt Express to cure any such attempted liens on the landowner's property.

GBX Initial Brief, pg. 134. Like GBX's proposed cost allocation condition, its proposed solution to mechanics lien issues in Illinois is not only completely wrong but void as a matter of law.

To begin with, construction of the Line will involve excavating land and pouring concrete for foundations that will support the lattice mast or monopole structures used in the Line. (GBX Exh. 9.0, ll. 341-349; GBX Exh. 9.4, ll. 60-61, ln. 121, ll. 135-136, ll. 172-182). The Line and its related structures would therefore be "improvements" within the meaning of Section 1(b) of the Illinois Mechanics Lien Law ("IMLL"), 770 ILCS 60/1(b).

Pursuant to the easement agreement between GBX and the landowner, the landowner would authorize or knowingly permit GBX to construct the Line on his or her land.

GBX will not be doing the work itself. Quanta Services, Inc. ("Quanta") will be providing engineering, procurement and construction services ("EPC") to GBX for the Project. (GBX Exh. 9.0, ll. 70-73; ll. 139-153). The EPC contract between GBX and Quanta (GBX Exh. 9.0, ll. 144-

145) will make Quanta a person who has an express contract with GBX, whom the landowner has authorized or knowingly permitted to construct the Line on the landowner's property. Quanta is therefore a "contractor" within the meaning of Section 1(a) of the IMLL, 770 ILCS 60/1(a).

It is not known whether Quanta will itself subcontract EPC work to other parties, but unless Quanta manufactures its own steel and concrete, it will have suppliers of such material who will be "materialmen" under the IMLL.

If GBX for any reason fails to pay Quanta, or if Quanta in turn fails to pay any of its subcontractors or materialmen, then Quanta and/or those subcontractors and materialmen will have a lien on real property far beyond GBX's easement parcel:

[A] contractor ...has **a lien upon the whole of such lot or tract of land and upon adjoining or adjacent lots or tracts of land of such owner** constituting the same premises and occupied or used in connection with such lot or tract of land as a place of residence or business; and in case the contract relates to 2 or more buildings, on **2 or more lots or tracts of land, upon all such lots and tracts of land** and improvements thereon **for the amount due to him or her for the material, fixtures, apparatus, machinery, services or labor, and interest at the rate of 10% per annum from the date the same is due. This lien extends to an estate in fee, for life, for years, or any other estate or any right of redemption or other interest that the owner may have** in the lot or tract of land at the time of making such contract or may subsequently acquire and this lien attaches as of the date of the contract.

770 ILCS 60/1(a) (emphasis added). The contractor's lien extends to the every interest that the owner (i.e., the landowner) may have in the lot or tract on which the Line is built. GBX's claim that a mechanics lien could attach only to GBX's easement parcel is, accordingly, arrant nonsense.

The lien of the contractor, subcontractor and materialman is a priming lien so long as notice of the lien is filed within four months of completion of the work. 770 ILCS 60/7(a). That

means that as long as the contractor keeps its eye on the calendar, its lien takes priority over the lien of a prior mortgagee to the extent of the amount owed to the mechanics lienor. A mechanics lien may be enforced by foreclosure of the affected lot or tract and all adjacent lots or tracts. 735 ILCS 5/15-1107(b).

GBX's offer to include a prohibition of mechanics liens in its easement agreements is just as empty and meaningless as its cost allocation condition. Section 1(d) of the IMLL provides as follows:

(d) **An agreement to waive any right to enforce or claim any lien under this Act**, or an agreement to subordinate the lien, where the agreement is in anticipation of and in consideration for the awarding of a contract or subcontract, either express or implied, to perform work or supply materials for an improvement upon real property **is against public policy and unenforceable.** This Section does not prohibit release of lien under subsection (b) of Section 35 of this Act, nor does it prohibit an agreement to subordinate a mechanics lien to a mortgage lien that secures a construction loan if that agreement is made after more than 50% of the loan has been disbursed to fund improvements to the property.”

770 ILCS 60/1(d) (emphasis added).

Whether GBX labels its proposal as a “prohibition” or a “waiver” of mechanics lien rights is immaterial because the intended effect is the same. Because GBX proposes that its mechanics lien prohibition be included in all contracts for work on the Project, this prohibition would be in anticipation of and in consideration for the award of any contract or subcontract.

[***BEGIN CONFIDENTIAL PORTION***] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

landowner's property is patently false and contrary to Illinois law, and its proposed clause in contractor agreements prohibiting such liens is against public policy and unenforceable under Illinois law.

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Respectfully submitted,

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